

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N°: 500-11-040900-116

SUPERIOR COURT
COMMERCIAL DIVISION

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, RSC 1985, C
C-36, AS AMENDED

KITCO METALS INC. corporation having a place
of business at 620 Cathcart, Suite 900, Montréal,
Province of Québec, H3B 1N9;

PETITIONER

and

RSM RICHTER INC. 2 Place Alexis-Nihon, Suite
1820, Montréal, Province of Québec, H3Z 3C2;

PROPOSED MONITOR

and

L'AGENCE DU REVENU DU QUÉBEC, legal
person constituted under article 2 the *Act
respecting the Agence du revenu du Québec*,
RSQ, c A-7.003 and designated under article 93 of
the *Tax Administration Act*, RSQ c A-6.002, having
an address for service at the *bureau de la direction
du contentieux*, at 3 Complexe Desjardins, 22nd
floor, Montréal, District of Montréal, Province of
Quebec, H5B 1A7

MISE EN CAUSE

INITIAL ORDER

ON READING Petitioner's petition for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**") and the exhibits, the affidavit of Bart Kitner filed in support thereof (the "**Petition**"), the consent of RSM Richter Inc. to act as monitor (the "**Monitor**"), relying upon the submissions of counsel and being advised that the interested parties who are likely to be affected by the charges created herein were given prior notice of the presentation of the Petition;

GIVEN the provisions of the CCAA;

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WHEREFORE, THE COURT:

- [1] **GRANTS** the Petition.
- [2] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:
- a. Service
 - b. Application of the CCAA
 - c. Effective Time
 - d. Plan of Arrangement
 - e. Stay of Proceedings against the Petitioner and the Property
 - f. Stay of Proceedings against the Directors and Officers
 - g. Possession of Property and Operations
 - h. No Exercise of Rights or Remedies;
 - i. No Interference with Rights
 - j. Continuation of Services
 - k. Non-Derogation of Rights
 - l. Interim Financing (DIP) and Directors' and Officers' Indemnification and Charge
 - m. Restructuring
 - n. Powers of the Monitor
 - o. Priorities and General Provisions Relating to CCAA Charges
 - p. General

Service

- [3] **DECLARES** that sufficient prior notice of the presentation of this Petition has been given by the Petitioner to interested parties.

Application of the CCAA

- [4] **DECLARES** that the Petitioner is a debtor company to which the CCAA applies.

Effective time

- [5] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard / Daylight Time on the date of this Order (the "**Effective Time**").

Plan of Arrangement

- [6] **DECLARES** that the Petitioner shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

Stay of Proceedings against the Petitioner and the Property

- [7] **ORDERS** that, until and including July 27, 2011, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Petitioner, or affecting the Petitioner's business operations and activities (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 22 hereinbelow except with leave of this Court. Any and all Proceedings

currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsections 11.1 and 34(9) CCAA.

- a. Without limiting the generality of the foregoing, and in light of the notices of assessment issued by the Agence du Revenu du Québec ("ARQ") in the amounts of \$227,088,232.97 and \$85,301,550.75 on November 5, 8, 9, 16 and 17, 2010, as well as January 26 and February 7, 2011 (the "Notices of Assessment"):
 - i) nothing in this Order shall have the effect of staying, impairing or delaying the conduct of the proceedings associated with the Petitioner's opposition to the Notices of Assessment; however,
 - ii) the taking of any Proceedings to enforce or collect any amounts pertaining to the Notices of Assessment shall be stayed for the duration of the Stay Period;

[8] **ORDERS** that, without limiting the generality of the foregoing, during the Stay Period, all Persons having agreements, contracts, licenses, permits or arrangements with or in favour of the Petitioner or in connection with any of the Property (as defined herein below), whether written or oral, for any subject or purpose:

- a. are restrained from accelerating, terminating, cancelling, suspending, refusing to modify or extend on reasonable terms such agreements, contracts, licenses, permits or arrangements or the rights of the Petitioner;
- b. are restrained from modifying, suspending or otherwise interfering with the supply of any goods, services, or other benefits by or to such Person (as defined herein below) thereunder (including, without limitation, any telephone numbers, any form of telecommunications service, any oil, gas, electricity or other utility supply); and
- c. shall continue to perform and observe the terms and conditions contained in such agreements, contracts or arrangements, so long as the Petitioner pay the prices or charges for such goods and services received after the date of this Order as such prices or charges become due in accordance with the law or as may be hereafter negotiated (other than deposits whether by way of cash, letter of credit or guarantee, stand-by fees or similar items which the Petitioner shall not be required to pay or grant);

Unless the prior written consent of the Petitioner, as well as that of the Monitor, is obtained or leave is granted by this Court.

Stay of Proceedings against the Directors and Officers

[9] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioner nor against any person deemed to be a director or an officer of the Petitioner under subsection 11.03(3) CCAA (each, a "Director", and collectively the "Directors") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the

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Petitioner where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

Possession of Property and Operations

- [10] **ORDERS** that the Petitioner shall remain in possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph 24 hereof.
- [11] **AUTHORIZES** the Petitioner to continue to carry on its business in a manner consistent with past periods.
- [12] **ORDERS** that the Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, individual self-employed contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
- [13] **ORDERS** that the Petitioner shall be entitled to pay the following expenses whether incurred prior to or after this Order:
 - a. all outstanding and future wages, salaries, commissions, vacation pay, current pension contributions and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts payable to former, current or future employees, officers or directors on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - b. all future amounts owing to or in respect of individuals working as independent contractors in connection with the Petitioner's business;
 - c. all outstanding amounts payable on or after the date of this Order in respect of (i) customer programs including, inter alia, rebates, adjustments, performance and volume discounts and (ii) billing errors, including duplicative invoicing, improper invoicing, duplicative payment, mispricing and various other billing and payment errors;
 - d. the fees and disbursements of any Assistants retained or employed by Petitioner in respect of these proceedings, at their standard rates and charges; and
 - e. subject to the prior written approval of the Monitor, outstanding amounts that became due prior to this Order to creditors who have liens or rights of retention on assets held by them for Petitioner or for Petitioner on behalf of its clients, provided that said payments shall not exceed \$600,000.00 in the aggregate;
- [14] **ORDERS** that, except as otherwise provided to the contrary herein, the Petitioner shall be entitled but not required to pay all reasonable expenses incurred by it in carrying on the business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a. all expenses and capital expenditures reasonably necessary for the preservation of their property or the business including, without limitation, payments on account of insurance, maintenance and security services; and
- b. payment for goods or services actually supplied to the Petitioner following the date of this Order.

[15] **ORDERS** that, except as otherwise provided to the contrary herein, the Petitioner shall remit, in accordance with legal requirements, or pay:

- a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension plan, and (iv) income taxes;
- b. amounts accruing and payable by the Petitioner in respect of employment insurance, Canada Pension Plan, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees;
- c. all goods and services or other applicable sales taxes (collectively "Sales Taxes") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- d. any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the business by the Petitioner.

[16] **ORDERS** that, except as specifically permitted herein, the Petitioner is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioner to any of their creditors as of this date; (b) to grant no security interest, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) not to incur liabilities except in the ordinary course of the business.

No Exercise of Rights or Remedies

[17] **ORDERS** that during the Stay Period, and subject to, inter alia, subsections 11.1 and 34(7) CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

- [18] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioner or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioner becomes bankrupt or a receiver as defined in subsection 243(2) of the Bankruptcy and Insolvency Act (Canada) (the "**BIA**") is appointed in respect of the Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioner in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

Continuation of Services

- [19] **ORDERS** that during the Stay Period and subject to paragraph 21 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioner or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioner, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Petitioner, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner, with the consent of the Monitor, or as may be ordered by this Court.
- [20] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioner on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Petitioner.
- [21] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

- [22] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioner shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Interim Financing (DIP) and Directors and Officers Indemnification Charge

- [23] a. **ACKNOWLEDGES** that, at this time, Petitioner does not seek nor require Interim (DIP) financing.
- b. **ACKNOWLEDGES** that, at this time, Petitioner does not seek a Directors' and Officers' Indemnification and Charge.

Restructuring

- [24] **DECLARES** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:
- a. permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
 - b. pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
 - c. convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$100,000.00 or \$500,000.00 in the aggregate;
 - d. terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioner and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioner may determine;
 - e. subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioner and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and

f. subject to section 11.3 CCAA, assign any rights and obligations of Petitioner.

- [25] **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioner pursuant to section 32 of the CCAA and subsection 24(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioner and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioner, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.
- [26] **ORDERS** that the Petitioner shall provide to any relevant landlord notice of the Petitioner's intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioner and the landlord.
- [27] **DECLARES** that, in order to facilitate the Restructuring, the Petitioner may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.
- [28] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the Personal Information Protection and Electronic Documents Act, S.C. 2000, c.5, the Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

Powers of the Monitor

- [29] **ORDERS** that RSM Richter Inc. is hereby appointed to monitor the business and financial affairs of the Petitioner as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
- a. shall, without delay, (i) publish once a week for two (2) consecutive weeks, or as otherwise directed by the Court, in La Presse and the Globe & Mail newspapers and (ii) within five (5) business days after the date of this Order (A) post on the

Monitor's website (the "Website") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioner of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

- b. shall monitor the Petitioner's receipts and disbursements;
- c. shall assist the Petitioner, to the extent required by the Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;
- d. shall assist the Petitioner, to the extent required by the Petitioner, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- e. shall advise and assist the Petitioner, to the extent required by the Petitioner, to review the Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- f. shall assist the Petitioner, to the extent required by the Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- g. shall report to the Court on the state of the business and financial affairs of the Petitioner or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- h. shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- i. may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- j. may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- k. may act as a "foreign representative" of the Petitioner or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- l. may give any consent or approval as may be contemplated by the Order or the CCAA; and

m. may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

[30] **ORDERS** that the appointment of RSM Richter Inc. as Interim Receiver is hereby terminated and **ORDERS** RSM Richter Inc., as Monitor, to:

- a. contact any third party (clients, suppliers or others) doing business with the Petitioner in order to obtain all information or confirmation relating to the operations of the Petitioner, its assets and the assets that it holds on behalf of its clients;
- b. monitor the Petitioner's cash flow on a weekly basis;
- c. file a report in the Court record on a monthly basis in order to report the following:
 - i) the developments in the status of the Petitioner's projected cash flow;
 - ii) the position of the precious metals and participations in the pool accounts held by the Petitioner on behalf of its clients or customers;
 - iii) the position of the segregated accounts held by the Petitioner on behalf of its clients or customers;
 - iv) the position of the storage accounts held by the Petitioner on behalf of its clients or customers;
 - v) transactions (in dollar value) carried out by the scrap gold purchasing department;
 - vi) procedural developments with respect to the contestation by the Petitioner of the Notices of Assessment issued by the Agence du Revenu du Québec which have been filed in support of the Petitioner's Petition for the issuance of an Initial Order as Exhibit R-4;
- d. request from any third party (clients, suppliers, depositories, financial institutions and others) doing business with the Petitioner to communicate all information, documents or confirmation that may be reasonably requested from them by the Monitor within the scope of its functions and, in case of any refusal by any such third party, the Monitor shall have the ability to bring this issue to the attention of the Court, with prior notice to the third party concerned.

[31] **ORDERS** that, for the purposes of subsection 23(1)(e) of the CCAA, the notification to the creditors shall be sufficient and fulfilled if the Monitor inserts a mention in the notice to the creditors referred to in subsection 23(1)(a)(ii)(B) of the CCAA, that the reports will be available from time to time on the Website and that notification of the production thereof will be done by posting a notice on the Website.

[32] **ORDERS** that, unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioner, and that the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioner.

- [33] **ORDERS** that the Petitioner and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioner in connection with the Monitor's duties and responsibilities hereunder.
- [34] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioner's counsel. In the case of information that the Monitor has been advised by the Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioner unless otherwise directed by this Court.
- [35] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioner or continues the employment of the Petitioner's employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [36] **DECLARES** that, if the Monitor acts in good faith and takes reasonable care in preparing the reports referred to herein, the Monitor is not liable for loss or damage to any person resulting from that person's reliance on any such report.
- [37] **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 29(i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [38] **ORDERS** that Petitioner shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
- [39] **DECLARES** that the Monitor, the Monitor's legal counsel (McCarthy Tétrault LLP) the Petitioner's legal counsel (Gowling Lafleur Henderson LLP) and the Monitor and the Petitioner's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$500,000.00 (the "**Administration Charge**"), having the priority established by paragraphs 40 and 41 hereof.

Priorities and General Provisions Relating to CCAA Charges

- [40] **DECLARES** that the priorities of the Administration Charge and any possible charge in favour of the Directors (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
- a. first, the Administration Charge;

- b. second, any charge in favour of the Directors authorized by further order of this Court and subject to the conditions that this Court may then see fit;

For the purposes of the Administration Charge and any possible Directors' charge, property subject to a right of retention shall not be deemed to be Property.

- [41] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.
- [42] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court.
- [43] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [44] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioner (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- a. the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Petitioner of any Third Party Agreement to which it is a party; and
- b. any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
- [45] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioner pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

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- [46] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes.

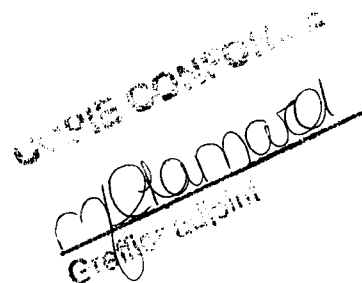
General

- [47] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Petitioner or of the Monitor in relation to the Business or Property of the Petitioner, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioner's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [48] **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [49] **ORDERS** that the Petitioner's financial statements, filed under Exhibit R-12, be kept confidential and under seal in the office of counsel for the Petitioner until, as the case may be, further order of this Court. However, all creditors of the Petitioner shall be entitled to obtain disclosure of the said Exhibits upon written request and provided they have signed a confidentiality agreement in standard form.
- [50] **DECLARES** that, except as otherwise specified herein, the Petitioner and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
- [51] **DECLARES** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [52] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioner and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.
- [53] **DECLARES** that the Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice to each other and any other Person directly affected, if any.

- [54] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioner, to the Petitioner's counsel (Gowling Lafleur Henderson LLP c/o Patrice Benoit, phone: 514-392-9550, fax: 514-876-9550, patrice.benoit@gowlings.com, 3700-1 Place Ville Marie, Montreal, Quebec, H3B 3P4), to the Monitor (RSM Richter Inc. c/o Gilles Robillard, phone: 514-934-3484, fax: 514-934-3504, 2, Place Alexis Nihon, bureau 2000, Montreal, Quebec, H3Z 3C2), to the Monitor's counsel (McCarthy Tétrault LLP c/o Sylvain Vauclair, phone: 514-397-4102, fax: 514-875-6246, savaclair@mccarthy.ca, 1000 De La Gauchetière Street West, Montréal, Quebec, H3B 0A2) and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.
- [55] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [56] **DECLARES** that the Monitor, with the prior consent of the Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of the Petitioner. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
- [57] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
- [58] **ORDERS** the provisional execution of the Order notwithstanding any appeal.

Montreal, July 7, 2011


 Honourable Mark Schrager, j.s.c.


 M. G. Gauthier
 Greffier adjoint